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This paper will explore the original intent behind the concept of Separation of Church and State, show how the military first implemented the concept, explore several case studies, and demonstrate how well the military has done in enforcing the concept of Separation of Church and State.

The thesis proves that the military has not gone too far with enforcement, but, in fact, been able to find the right balance to protect both the government from establishing a law preferential to one religion, while simultaneously protecting free religious expression by military members.

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## MASTER OF MILITARY STUDIES

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**Separation of Church and State:**

**Has the Military Gone Too Far?**

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR  
THE DEGREE OF MASTER OF MILITARY STUDIES

By

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## *Preface*

The subject of separation of church and state has intrigued me since becoming a Christian in 1993. As an outspoken Christian, my superiors occasionally warned me about being too expressive about my faith for fear I would cross the line between separation of church and state. This propelled me on a journey to find out as much as possible about the subject. I needed to know what our Founding Fathers intended when designing the First Amendment; more importantly, what President Thomas Jefferson meant when he wrote his letter to the Danbury Baptist Congregation., espousing the Wall of Separation between the church and state.

I decided to write about the concept of separation of church and state to provide military members more clarity on what the concept means, dispel erroneous information frequently espoused by those who do not understand the Founder's intentions, and to discern whether the military has gone too far enforcing the concept. Keeping religion out of the state (government) was never the Founder's intentions. Protecting the religious from the state drove Jefferson to pen his letter espousing the Wall of Separation between church and state. As I will discuss in this thesis, Jefferson never intended for the concept to stifle religious expression or ban religious symbols from bases across the country. Military members at all levels will benefit from this thesis. A better understanding of the concept will protect religious expression, while preventing the military from elevating one religion over another.

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## **Executive Summary**

**Title:** Separation of Church and State: Has the Military Gone Too Far?

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**Thesis:** This paper will explore the original intent behind the concept of Separation of Church and State, show how the military first implemented the concept, explore several case studies, and demonstrate how well the military has done in enforcing the concept of Separation of Church and State. In the end, the thesis will prove that the military has not gone too far with enforcement, but, in fact, been able to find the right balance to protect both the government from establishing a law preferential to one religion, while simultaneously protecting free religious expression by military members.

**Discussion:** British Americans came to the new colony to escape religious persecution and advance the gospel of Jesus Christ to the new colony. In doing that, they often instituted the same type of persecution they sought to escape. After 150 years of persecution, the Continental Congress drafted the First Amendment to the Constitution guaranteeing the government would make no law respecting an establishment of religion or prohibiting the free exercise thereof. With this premise, President Jefferson drafted a letter to the Danbury Baptists in 1802 to clarify to Wall of Separation between church and state articulated in the First Amendment. In giving guidance to the Navy, three of the four articles in the Articles of War, were devoted to the religious nurture of continental soldiers. Over the next 200 years, America's religious landscape changed drastically forcing the government to intensify its efforts to keep the Wall of Separation high between the church and state. The last 30 years tested the concept as the military has ruled on hundreds of cases revolving around the Separation of Church and State. This analysis looks at several cases to answer the question, "Has the Military Gone Too Far" in enforcing the concept?

**Conclusion:** The thesis proves that the military has not gone too far with enforcement, but, in fact, been able to find the right balance to protect both the government from establishing a law preferential to one religion, while simultaneously protecting free religious expression by military members.

## **INTRODUCTION**

Most people would probably answer yes if asked whether the term separation of church and state was included in the Constitution of the United States. Powerful leaders, government agencies, highest levels of military leadership, big businesses, and the school system use the term to emphasize the need to keep religious matters separate from the government or state. Neither the Constitution nor the Bill of Rights contains language separating church and state. The First Amendment of the Constitution guarantees individuals the Freedom of Religion, which drove Jefferson to write to the Danbury Baptists in 1802 regarding the concept of separation of church and state. Understanding why Jefferson wrote this letter would clear up the confusion and help military leadership properly enforce the concept. This paper will explore the original intent behind Jefferson's letter, show how the military first implemented the concept, explore several case studies, and demonstrate how well the military has done in enforcing separation of church and state. In the end, the thesis will prove the military has not gone too far with enforcement, but, in fact, been able to find the right balance to prevent the government from establishing a law preferential to one religion, while simultaneously protecting free religious expression by military members.

## **RELIGION IN EARLY AMERICA**

### **Escaping Religious Persecution**

Why did Jefferson write his letter to the Danbury Baptists? What issues were taking place that drove him to address such a potentially divisive subject? Before answering these questions, one must go back one-hundred and fifty years to understand why the English and others came to America, namely to escape religious persecution, and for many, a chance for

economic prosperity. “For the men and women of faith who crossed the Atlantic in the Seventeenth Century, America was in John Withrop’s words, a religious refuge.”<sup>1</sup> In Europe, religious fervor ran rampant as the continent was still wrestling with the Protestant Reformation.<sup>2</sup> Protestant and Catholics firmly believed their way of religion was the only way and those that did not believe were eternally damned. In order to deal with the pagans, early Christians severely persecuted anyone not believing in the Christian faith, even to the point of torture and death.

In the mid-seventeenth century, Puritans poured into New England to escape European religious persecution and hear a new gospel focused on the love of Christ. When coming to the new land, there was an expectation that all new arrivals were coming for one thing; to freely worship the Lord Jesus Christ. One author said, “Today some of the things that the Puritans said and did seem ugly. Although they were committed to converting the native populations to Christianity, they did not respect their neighbors and said so.”<sup>3</sup> In the Puritan’s eyes, their neighbors, the Indians, were savages desperately in need of a Savior. Differing beliefs were not tolerated. In an ironic twist, the Puritans were behaving much like the British who formerly persecuted them. The Puritans persecuted everyone from Indians to the Baptists. For most of the seventeenth century, religious groups established themselves primarily in New England, Pennsylvania, New Jersey, Massachusetts, and Virginia. Even then, North America was full of cultural diversity and highly religious. In 1619, the “Virginia House of Burgesses enacted religious laws strictly enjoying church attendance and Sabbath-keeping. There was no separation of church and state.”<sup>4</sup> In Virginia, the Church of England was both a religious and secular institution since the King was the head of both the church and the state. Attending church was recognition of loyalty to the crown. After the Great Awakening, three major



denominations emerged to replace Anglicans, Quakers, and Congregationalists. Presbyterians, Baptists, and Methodists flourished, especially behind powerful evangelists like George Whitfield and John Wesley. The American Revolution had little to no impact on the revival started by Whitfield and Wesley.

### **Religion and Continental Congress**

Religion continued to play a major role in the development of the Continental Congress. “Equally remarkable was the energy Congress invested in encouraging the practice of religion throughout the new nation, energy that far exceeded the amount expended by any subsequent American national government.”<sup>5</sup> Since religion was such a dominant theme in the Continental Congress, May 17th was pronounced as a day of humiliation, fasting, and prayer throughout the colonies. Congressional leaders and ministers preached a political theology consisting of the belief that the war with Britain was God’s punishment for America’s sin, and that only through reconciliation and confession would God grant victory.

### **Religion and the Navy**

Religion played an equally important role in the affairs of the military. In fact, three of the four articles in the Articles of War were devoted to the religious nurture of Continental soldiers. Article Two strongly recommended officers and soldiers attend religious services.<sup>6</sup> Punishment ensued for officers and soldiers who acted indecent or irreverent during religious services. Top priorities for the fledgling Navy in their first three articles included honor and virtue of officers, attendance at religious services, and not using blasphemous language. Officers and soldiers were highly encouraged to read the scriptures daily and two religious services a day

were offered for those wanting to attend. “It is difficult to overemphasize Congress’s concern for the spiritual condition of the armed forces, for the covenant mentality convinced it that irreligion in the ranks was, of all places, the most dangerous, for God might directly punish a backsliding military with defeat, extinguishing in the process American independence.”<sup>7</sup> With religion playing a central role in both civilian affairs and military life, was there a need to put up a wall of separation between the church and the state?

### **First Amendment**

House and Senate debates took place in the latter part of the 18th century to better define the role of religion in the affairs of the state. By 1791, the First Amendment to the Constitution guaranteed, “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”<sup>8</sup> The prevailing attitude of Jefferson leading up to the First Amendment was simple. Unlike the previous century where religion dominated national affairs, Jefferson believed a person’s religious convictions were personal, and that the state should no longer have a voice in whether a person chose to attend church. He believed the state was in no condition to regulate faith, more specifically, an individual must make their own decision about God separate from the influences of the state. A forerunner to Jefferson, Roger Williams, said it better in 1643, when he said, “The state could legitimately concern itself only with matters of civil order, but not religious belief.”<sup>9</sup> When drafting the religious language of the First Amendment, two distinct ideas emerged. First, the federal government would make no law concerning government support of a national denomination (Establishment Clause), and second, the government would not impede the free exercise of one’s religion (Free Exercise Clause).

## **Separation of Church and State**

In response to a letter written in 1801 from the Danbury Baptists, Jefferson famously coined the term Wall of Separation between the church and state, which served as the bedrock for the concept so often used today to keep religious matters out of government. Although a man of deep religious conviction, he strongly believed in the Wall of Separation and discontinued the practice of days of fasting and thanksgiving President George Washington and President John Adams observed prior to him taking office. Knowing the scrutiny it would receive Jefferson consulted several politicians and lawyers before sending the letter to the Danbury Baptists.

The most important thing to understand about Jefferson's response to the Baptists was to whom it was protecting. The state of Connecticut discriminated against the Danbury Baptists by forcing a religious tax that supported the Congregationalist Church. When the Baptists tried to get a certificate of exemption, the state made it extremely difficult to attain. In effect, the Wall of Separation protected the church from the state, not the state from the church. The Danbury Baptists were simply asking Jefferson to protect them from further religious discrimination from the state of Connecticut. President James Madison echoed Jefferson's comments by saying, "There is not a shadow of right in the federal government to intermeddle with religion. This subject is, for the honor of America, perfectly free and unshackled. The government has no jurisdiction over it."<sup>10</sup> In essence, what Jefferson and Madison were saying is the First Amendment guarantees freedom *for* religion. This is in stark contrast to what is espoused today, which advocates freedom *from* religion. Certainly, the First Amendment separates the institution of the church from the institution of the state, but does not separate the Christian foundation from the government. Better yet, it does not separate Christian people from activity within their state or government. The thought of religious people being discouraged

from expressing their faith, except during church services would have been unthinkable to the Founding Fathers. Since 1802, many things have happened across America to challenge both the First Amendment and Jefferson's concept of separation of church and state.

### **God in America Timeline**

The following timeline highlights some of the major religious events that have taken place since Jefferson's letter to the Danbury Baptists (See appendix A). The timeline not only depicts major events occurring over 200 years; more importantly, it shows how the religious landscape has changed. The world that Christopher Columbus, John Winthrop, and William Penn knew has changed drastically. Religion in twenty-first century America is much more pluralistic, complex, and opponents of the Judeo-Christian faith are far more prevalent and vocal. With the changing religious landscape, every level of government to include all branches of the uniformed services follow the guidelines set forth by Jefferson's separation of church and state. If religious matters are separate from the affairs of the military, does commissioning and consequently paying chaplains to minister to the needs of military members violate the intent of separation of church and state?

## **MILITARY EXAMPLES OF SEPARATION OF CHURCH AND STATE**

### **Chaplains**

Military chaplains date back to the eighth century when priests served on English naval vessels. Chaplains served through the Revolutionary War, and the current form of military chaplain dates back to the First World War. It is important to understand the rationality behind military chaplains. When military members deploy from their home station to fight in a foreign

land, the government essentially takes them away from their home churches and religious community, which can be an infringement on their First Amendment right to free exercise of their religion.

When Madison wrote his Detached Memoranda in 1817, he concluded that funding military chaplains was a violation of the Establishment Clause. He believed the funding of chaplains was tantamount to the establishment of a national religion forbidden by the First Amendment.<sup>11</sup> In his mind, the use of national taxes to fund military chaplains constituted a breach in the Establishment Clause. He did not argue with the need for military chaplains, but disagreed with taxpayers funding their salaries. Madison believed military chaplains should be funded the same way civilian ministers were paid, namely by the tithes and offerings of their members, or chaplains should be paid by their supporting denomination. Despite Madison's objections, the Supreme Court ruled in favor of chaplains in 1983 when deciding *Marsh v. Chambers*. In deciding *Marsh v. Chambers*, Chief Justice Warren Burger's majority opinion ruled that the use of chaplains was constitutional because they had been serving for over 200 years, therefore making the chaplain corps a tradition at that point. Opponents of military chaplains argue that appointing chaplains is a form of religious discrimination and religious divisiveness because officially recognizing some religions officially excludes other religions.

After thoroughly examining the First Amendment and the intent behind Jefferson's separation of church and state, the use of military chaplains is both constitutional and fair. The Establishment Clause prohibits United States government from placing one religion over another. In 2011, military chaplains supported more than 100 different faiths. In fact, there are more imams per Muslim and rabbis per Jew than there are Catholic priests per Catholic. Just 30 years ago, military members had a choice of three religious services to attend during basic training. They

could attend a Catholic, Protestant, or Jewish service. Today, they have a plethora of choices, and even if stationed overseas, their service makes religious accommodations to support their particular faith. Military chaplains train in interdenominational services and often carry the Bible, the Book of Mormon, the Quran, prayer rugs, and a portable altar to accommodate the religious needs of their military members. In keeping with the First Amendment, the Department of Defense ensures religious equality for all and preferential treatment of one religion is not given over another. Another area of concern for proponents of the Establishment Clause is service academies. The next section will focus specifically on the Air Force Academy.

### **Air Force Academy Religious Discrimination**

The Air Force Academy received national attention in 2004 when a survey produced several alarming trends with respect to religion. Many survey participants reported hearing slurs and jokes about non-Christian religions. Some cadets felt ostracized for espousing a different religion or having no religious preference. Others felt evangelical Christian leaders at the Academy discriminated against cadets not sharing their faith. In 2005, General Roger Brady oversaw a religious climate assessment of the Air Force Academy. They reviewed all the policies, media reports, and previous climate assessments before conducting interviews of faculty and students.<sup>12</sup> Brady's team interviewed over 300 people, consisting of leadership, faculty, staff, cadets, and people outside the Academy like Mr. Mikey Weinstein, one of the most vocal critics of the Academy's efforts to proselytize cadets. They also reviewed Academy surveys and conducted a thorough review of the chaplaincy programs. Three overarching themes surfaced from the assessment. 1. "Some Academy staff had overreached from their leadership position and made statements concerning faith at inappropriate times."<sup>13</sup> 2. The

Academy was not as sensitive in addressing the needs of minority religions or accommodating their specific needs.<sup>14</sup> 3. “Some cadets had demonstrated a tendency toward religious intolerance that needed to be corrected.”<sup>15</sup>

Since the assessment, the Air Force Academy has taken a top-down approach to correct the problem. Even Weinstein agreed with the Academy’s efforts in 2009 by saying, “This is the first time we feel positive about things around here (the Academy).”<sup>16</sup> Since the review, the Academy has established an Earth-Centered Religious Group, created an Interfaith Council, and decreased the amount of religious instruction deemed overtly Christian. Religious complaints decreased from over 70 in 2005 to less than 10 in 2009. Similar to the need for diversity among chaplains, the military struck a good balance in the case of religious discrimination claims at the Air Force Academy. As General Brady remarked, “It’s an ongoing challenge dealing with 18- to 22-year olds, and ensuring they understand the values of our Air Force, in this case, most notably, understanding they must respect the rights of others to have beliefs different from their own.”<sup>17</sup> The Academy leadership’s response shows a respect for both the Establishment and Free Exercise Clause of the First Amendment. They immediately addressed the concerns of other faiths, atheists, and secular humanists to ensure no religion was favored over another. At the same time, they allowed free exercise of one’s religion in the establishment of non-Christian groups, even providing the same funding afforded to Christian-based groups. The Academy drew national attention for their religious climate, but they are not the only service garnering attention for issues of Separation of Church and State. The Army made headlines in 2002 for a practice they called Free Day Away at Fort Leonard Wood Missouri.

## **Army Religious Issues with Free Day**

For 37 years, Fort Leonard Wood Army base collaborated with Tabernacle Baptist Church of Lebanon Missouri to host a Free Day Away for soldiers during their training schedule.<sup>18</sup> There were only two days during the eight-week training course where soldiers were able to leave the base. They could leave the day before graduation to spend time with friends and family and to participate in Free Day Away. Part of the Free Day Away festivities included soldiers being picked up by bus, transported to Tabernacle Baptist Church, enjoying a day of recreational activities, receiving a free home-cooked meal, and attending a religious service before returning to the base. Part of the evening service involved an altar call where soldiers were given the opportunity to receive Jesus Christ as their personal Savior.

In 2009, The Americans United for Separation of Church and State filed a complaint with the Department of Defense asking them to investigate the practice of requiring soldiers to attend a religious service as a direct violation of the First Amendment. Another part of their complaint revolved around soldiers getting a coveted day off to participate in a religious event while others had to stay on base because they decided not to attend. President of the Military Religious Freedom Foundation, Mikey Weinstein said, “This program does anything but re-motivate and rejuvenate many of the soldiers. In fact, we have reports from parents of soldiers who were doing just fine in basic training until this free day, but were suddenly depressed and questioning if they'd made the right decision in joining the Army immediately after it.”<sup>19</sup> In response to the complaint and subsequent investigation, the Army changed the name of the Free Day Away program to Tabernacle Baptist Church Retreat.

In 2010, the Army Commanding General responded to the complaint by saying, “Soldiers who opt not to attend the church retreat are able to bowl at the post bowling alley, use their



personal cell phones, and order pizza to be delivered at their barracks. These options are comparable to the Free Day Away, except that they are on post rather than off post, which does not provide a free day away.”<sup>20</sup> In his response he reaffirmed changes were ongoing to ensure soldiers knew the program was strictly voluntary. One of the changes included soldiers signing a waiver stating they were aware of the event’s religious affiliation. Chaplain (Colonel) Roger Heath said the program has been a blessing to soldiers for over 30 years at no cost to the government. The Army’s response to Americans United for Separation of Church and State shows the balanced approach the military takes when it comes to issues of separation of church and state. They immediately investigated the issue and made positive changes. Instead of overreacting and cancelling the program, which benefits thousands of soldiers annually, the Army weighed the positives and negatives before instituting changes. Like Fort Leonard Wood, Fort Bragg became the next target for the Military Association of Atheists and Free Thinkers.

### **Religious Issues at Fort Bragg Rally**

Fort Bragg Army Base in Fayetteville, North Carolina received backlash from both the Americans United for Separation of Church and State and the Military Association of Atheists and Free Thinkers for a 2010 event called Rock the Fort. The Billy Graham Evangelical Association, several surrounding churches, and base leadership sponsored the free event. Rock the Fort brought several popular Christian recording artists to Fort Bragg to entertain and encourage families and children in the Fayetteville area. The event was strictly voluntary, open to anyone who wanted to attend, to include civilians from the local community.

Opponents stated the event had the express intent of spreading Christianity at the expense of the taxpayer, alleging Fort Bragg spent up to fifty-thousand dollars on the event. Moreover,

opponents claimed Fort Bragg leadership discriminated against soldiers by giving them extra duties if they decided not to attend the event. Prior the event, three major atheist organizations petitioned base leadership to cancel the rally. In response, Lieutenant General Frank Helmick wrote, "I have taken steps to ensure no soldier in my command is pressured in any way to attend this event. This event will occur during an off-duty time for the majority of the soldiers on this installation, and that they are free to attend this event if they so desire. No one in this command should feel pressure to attend."<sup>21</sup> He also discussed the constitutionality of holding an event like Rock the Fort asserting the Constitution fully supports a chaplain corps and for the corps to offer religious events like Rock the Fort in promoting morale, welfare and esprit de corps.<sup>22</sup>

Rock the Fort convened despite opponent's objections. Knowing an event of this magnitude would attract negative attention from atheist and separation of church and state organizations, Helmick, the base leadership, the legal team and the chaplain corps thoroughly researched constitutional law ensuring the event did not violate First Amendment rights. Helmick's response to the Freedom from Religion Foundation showed due diligence was taken months prior to the event, guaranteeing a quality event for the community of Fort Bragg and Fayetteville. Ensuring the event took place on a day where the majority of soldiers were off and making attendance strictly voluntary guaranteed the constitutionality of Rock the Fort. Fort Bragg had another challenge immediately following Rock the Fort when atheist, Sergeant Justin Griffith requested leadership support Rock Beyond Belief, an event sponsored by the American Atheist Organization.

Griffith is the Military Director for the American Atheist Organization and sponsor of Rock Beyond Belief. He admitted Rock Beyond Belief was in reaction to Rock the Fort. Rock Beyond Belief will commence on March 31, 2012, and according to Griffith, promises to be a

day of fun and entertainment for all who attend. Getting the event on the calendar was not an easy task, as Sergeant Griffith experienced roadblocks at every turn. Fort Bragg refused to provide the same funding, venue, and endorsement provided for Rock the Fort. The Commanding General demanded any advertisement for the event ensure Fort Bragg did not endorse the event. Griffith was offered a much smaller venue than the Parade Field given to Rock the Fort.

After the first Rock Beyond Belief was cancelled due to the base's lack of support, Griffith petitioned the base commander for a different month and bigger venue. This time, base leadership approved Griffith's request and promised to provide the same support provided for Rock the Fort. True to Hemlick's promise of providing equal resources that Rock the Fort enjoyed, base leadership ensured equality for the non-believing population of Fort Bragg and the event will take place in March 2012. When serving in areas of the Middle East, the military must ensure lines between church and state are never blurred. That is why the Department of Defense was alarmed when they discovered engraved Bible verses on rifle sights provided for United States forces fighting the wars in Iraq and Afghanistan.

### **Bible Verses on Rifle Sights**

Unbeknownst to the Department of Defense, the Michigan-based riflescope manufacturer, Trijicon, imprinted Bible verses on rifle sights prior to being shipped to Marines deployed to Afghanistan and Iraq. The company garnered a 660-million dollar contract with the Department of Defense and supplied up to 800,000 sights to the Marine Corps.<sup>23</sup> The Department of Defense is extremely clear on religious expression in Afghanistan and Iraq. In order to avoid the appearance that the United States is conducting a religious crusade, proselytizing is strictly

forbidden. Engraving Bible verses on rifle sights provided to Marines is a violation of the First Amendment, specifically the Establishment Clause. The founder of Trijicon was a devout Christian and started engraving Bible verses on the sights when he founded the company in 1981. Sales Director Tom Munson said the inscriptions have always been there, and from his point of view, there was nothing wrong or illegal with the practice.<sup>24</sup> The company website says, "We believe that America is great when its people are good. This goodness has been based on Biblical standards throughout our history, and we will strive to follow those morals."<sup>25</sup> When made aware of the Bible verses, General David Petraeus remarked, "This is disturbing, and a serious concern for me."<sup>26</sup>

As soon as the Department of Defense became aware of the inscriptions, dialogue with Trijicon ensued, and within a month, Trijicon President released a statement saying his company would immediately cease the practice of engraving Bible verses on sights. In addition, Trijicon provided kits to remove the Bible verses from sights already in the field. The practice of Trijicon engraving Bible verses on sights is perfectly acceptable when sold to an individual who approves of the inscription. In this case, when the Department of Defense endorses an overtly Christian symbol, it constitutes a violation of the First Amendment. The Department's swift action ensured the separation of church and state lines remained clear, and another example of the precarious balance the military must strike in its efforts to protect First Amendment rights. If putting Bible verses on riflescopes and holding evangelical crusades ignites atheist organizations, institutionalizing prayer, especially in the name of Jesus Christ, is an equally explosive issue.

### **Invocations and Combat Prayers**

An invocation or prayer commences at almost every military event, whether it is a promotion ceremony, retirement ceremony, awards ceremony, or any other formal event. Military

invocations are as old as the military itself, but within the last 30 years, the constitutionality of forcing military members to listen to a prayer, especially when they do not believe in God, has come into question. Specifically, opponents of government-sponsored invocations take issue with prayers offered in Jesus' name. This issue is equally contentious among the chaplain community as several chaplains have been reprimanded, and in some cases, discharged from service for disobeying the order to refrain from praying in Jesus' name.

The problem is not as simple as one might think. Both sides can claim the Constitution supports their position. On one hand, those that object to faith-specific prayers contend the chaplains violate the Establishment clause when offering faith-specific prayers at public events because such prayers represent the government's endorsement of a particular faith and force a religious experience on the people that are required to be at the event.<sup>27</sup> On the other hand, one can argue that chaplains must pray faith-specific prayers because chaplains have a constitutional right to pray, as their faith requires. Chaplains can use two different clauses to justify faith-specific prayers. The Free Exercise Clause protects the chaplain's freedom to exercise their faith and the Freedom of Speech Clause limits the government's ability to restrict an individual's free speech. The Constitution actually supports both arguments.

To make the situation more difficult, chaplains can pray faith-specific prayers if asked to pray at an individual ceremony or event. If a military member asks a chaplain to pray a faith-specific invocation at their retirement or promotion ceremony, the honoree's request takes precedence because it is a personal event. Some atheist organizations are also challenging other prayers offered outside chaplain invocations. These organizations recently challenged prayers offered in combat zones by other officers and platoon leaders.

Jason Torpy, President of the Military Association of Atheists and Free Thinkers and ex-Army Captain, vehemently disagrees with commanders, at any level, praying with their soldiers before going out on a mission. There is no evidence that this is a widespread practice, but while still on active duty, Torpy challenged his commander who assembled soldiers to pray for their safety before departing on a mission. When the commander asked the group to assemble, Torpy politely excused himself so he would not interfere with his commander's intentions. After the prayer, his commander asked him why he was so intent on creating trouble. Torpy replied by asking the same question since he knew the commander was aware of his atheist convictions. Torpy said the soldiers had to assemble for a Christian prayer when they could have been using the time to better prepare for the mission. In a later interview, Torpy admitted that the team was fully prepared, but the prayer was a distraction. Torpy said his commander should not have assembled the group of soldiers for a Christian prayer, not knowing if all of them believed in the same God. He believed it was an abuse of power on behalf of the commander.<sup>28</sup>

Complaints like Torpy's and others will continue to challenge the military as they wrestle with a more religiously diverse population. Dr. Robert W. Tuttle, Professor of Law and Religion, George Washington University Law School said, "I think that the litigation is likely to increase. Service members feel increasingly entitled to have their beliefs respected by those in positions of authority. At the same time, supervisors feel that they are entitled to express their religious beliefs to peers and subordinates. This conflicting sense of entitlement often produces litigation."<sup>29</sup> If Dr. Tuttle is right, the military will have to weigh each case separately. In the case of chaplains praying faith-specific prayers, senior chaplains and commanders highly encourage their chaplains to pray a more generic prayer when praying at official functions. At personal ceremonies when asked to pray a faith-specific prayer, chaplains are encouraged to do

so. The military would go too far enforcing the policy if they forbade chaplains from praying faith-specific prayers at any ceremony. In a very precarious situation, the military has struck a good balance for the chaplains. In the case of commanders praying for their soldiers before going on combat missions, military leaders will have to remind commanders at all levels about individual First Amendment rights. If commanders want to pray, they will need to caveat the prayer by offering some form of opt out if a soldier does not want to pray. This would satisfy both the requirement of the Establishment and Free Exercise Clause. This paper has shown that the bulk of opposition from proponents of Separation and Church and state is aimed at the Christian faith and Christian's attempt to proselytize unbelievers. The Cross of Christ is one of the most visible objects associated with Christianity and has become an object of controversy at Camp Pendleton Marine Base in California.

### **The Cross at Camp Pendleton**

In 2003, several Marines from 1st Marines, 1st Marine Division stationed aboard Camp Pendleton, California carried two telephone poles 1,600 feet up the San Onofre Mountain and combined them to form a cross at the top of Microwave Hill as a way to commemorate fallen Marines in Operation IRAQI FREEDOM. The Regimental Commander said, "At the base of the cross is a marble plaque bearing the regiment's emblem. The emblem is surrounded by the four coins of the regiment's battalions and the regimental coin in the middle of each of the stars that represent the Southern Cross. The monument is an unofficial memorial created by the Marines of 1st Regiment."<sup>30</sup> The cross was destroyed in the 2007 California wildfires and was replaced in 2008 by Marines of 1st Battalion, 4th Marine Regiment, 1st Marine Division. Over the years,

Marines and family members have taken rocks up to the top of the hill to lay at the cross as a reminder of Marines they lost in battle.

On November 11, 2011, Veterans Day, Marines took a 13-foot cross to the top of the mountain and placed it next to the 2008 cross to honor four Marines who died in Iraq and honor others who died in foreign wars. The Veterans Day march up the mountain was witnessed by many as a touching tribute to all those who gave the ultimate sacrifice for their country. On November 14, 2011, the first complaint of many began flooding the Regimental Commander's mailbox. Torpy began an all-out assault on the cross atop the mountain as government's endorsement of Christianity since the cross is on federal land and managed by the Forest Service. Torpy said, "No cross or statue of Jesus represents military service. Military service is being exploited to secure unconstitutional Christian privilege."<sup>31</sup>

Since Torpy lodged his formal complaint, several people have rallied to keep the crosses standing atop Microwave Hill. One congressman from Montana said, "Using a tiny section of public land for a war memorial with religious themes is not the same as establishing a state religion. That's true whether it's a cross or a Star of David on a headstone in the Arlington National Cemetery, an angel on the Montana Vietnam Memorial in Missoula or a statue of Jesus on Big Mountain."<sup>32</sup> Former Navy medical corpsman Shannon Book, who helped carry the 2011 cross, said it was not about religion, it was about remembering fallen Marines. Recently, the Christian-based American Center for Law and Justice (ACLJ) petitioned the base commander to keep the crosses standing. They wrote, "Crosses are an apt, appropriate and constitutionally permissible means of honoring and commemorating the sacrifice of those who have given their life for their comrades and their country."<sup>33</sup> The ACLJ also wrote, "In fact, the Constitution



forbids the type of relentless and all-pervasive attempt to exclude religion from every aspect of public life that critics' statements suggest.

After a thorough legal review from the Camp Pendleton legal team, the case was forwarded to the Commandant of the Marine Corps in January 2012. At the time of this writing, the commandant was still considering the case. If the commandment rules in favor of Camp Pendleton to keep the crosses standing, the decision will prove the military exercised fair judgment despite heavy criticism from the Military Association of Atheists and Free Thinkers. If the commandment rules in favor of the opposition, it would be an extreme overreaction on the part of the military. Although often used to represent Christ, the cross pre-dates Christianity. Early European cult caves contained crosses that traced back to the Stone Age. Celtic coins minted many centuries before the Christian era had nothing to do with Christ, so broad brushing the cross as inherently Christian is unwarranted.

After reviewing the original intent behind Jefferson's letter, the way the concept has evolved over the last 200 years, and by looking at several case studies, any reasonable person can conclude that issues dealing with separation of church and state are never clear-cut or simple to rule on.

### **CONCLUSION**

Knowing that Jefferson wrote the Danbury letter to protect the religious from the state should change the way people look at issues of separation of church and state. Military leaders and government officials would do due diligence to research constitutional law and the Federalists papers to understand the original intent behind the First Amendment right to Freedom of Religion. Kowtowing to the minority voice that seeks to extinguish expressions of faith in any area of society is the wrong answer. The Founding Fathers never intended for Christian

expressions of faith to be stifled in the workplace. To purport that notion is an extreme bastardization of the concept.

With the difficult task of investigating separation of church and state complaints, military leadership will never be able to get it perfectly right. On one side of the religious spectrum, those that are opposed to the separation of church and state, will argue that the military has gone too far when enforcing the concept. On the other side of the continuum, proponents like the Americans United for Separation of Church and State and the Military Association for Atheists and Free Thinkers will expect the military to enforce the concept more rigorously than they are currently doing.

After examining seven case studies, the conclusion is simple. Given the First Amendment right to Freedom of Religion and the original intent behind the concept of separation of church and state, the military struck the right balance in all the cases considered. Removing chaplains, not allowing religious rallies aimed at encouraging service members and communities, and tearing down religious symbols because they might have a Christian connotation is wrong on many levels. Ignoring separation of church and state complaints because leadership still views the military as predominately Christian would only widen the divide and incite anger from proponents of separation of church and state. Thoroughly researching each complaint and ruling on them based on the First Amendment's Establishment and Free Exercise Clause proved military leadership has done due diligence in addressing both sides of the equation. With the religious landscape becoming increasingly pluralistic, military leadership will constantly refer to Jefferson's letter as they seek to strike an acceptable balance in cases involving separation of church and state.

## God in America Timeline

1. 1802 - Danbury Baptist Letter
2. 1812 - Madison recommends National Day of Prayer
3. 1820 - Joseph Smith founds Mormon religion
4. 1838 - Transcendentalist movement emerges
5. 1844 - Seventh-Day Adventist church growth explodes
6. 1844-45 – Methodists and Baptists split over slavery
7. 1868 – 14<sup>th</sup> Amendment passed; ensured Bill of Rights applied to States
8. 1880 – Agnosticism took root in America
9. 1906 – First Hindu Temple erected in San Francisco
10. 1908 – Japanese, Chinese, Asian, and Indians settle in American West
11. 1924 – First African-American Islam Community established in New York
12. 1947 – Supreme Court Ruling resurrects Jefferson’s “Wall of Separation”
13. 1948 – Supreme Court rules against “release time” for religious instruction
14. 1955-56 – U.S. defined as Judeo Christian Nation; “In God We Trust” becomes National Motto
15. 1962-63 – Supreme Court rules school prayer, Bible reading, and reciting Lord’s Prayer as Unconstitutional
16. 1963 – Madeline Murray O’Hair founds American Atheists
17. 1965 – Supreme Court grants religious exemption to the military draft
18. 1976 – Hindu Temple consecrated
19. 1985-86 – Supreme Court rules “moment of silence” Unconstitutional; first Shinto Shrine established
20. 1992 – First Muslim prayer reading in U.S. Senate
21. 1996 – White House celebrates end of Ramadan (Muslim holiday)
22. 2000 – U.S. Senate opens with Hindu prayer
23. 2005 – Supreme Court rules on two cases involving display of “Ten Commandments”
24. 2009 – President Obama acknowledges nonbelievers in Inaugural Address

## Appendix A

*Danbury Baptist Association's letter to Thomas Jefferson, October 7, 1801.*

Sir, — Among the many millions in America and Europe who rejoice in your Election to office; we embrace the first opportunity which we have enjoyed in our collective capacity, since your Inauguration, to express our great satisfaction, in your appointment to the chief Magistracy in the United States; And though our mode of expression may be less courtly and pompous than what many others clothe their addresses with, we beg you, Sir to believe, that none are more sincere.

Our Sentiments are uniformly on the side of Religious Liberty — That Religion is at all times and places a matter between God and individuals — That no man ought to suffer in name, person, or effects on account of his religious Opinions - That the legitimate Power of civil government extends no further than to punish the man who works *ill to his neighbor*: But Sir our constitution of government is not specific. Our ancient charter together with the Laws made coincident therewith, were adopted on the Basis of our government, at the time of our revolution; and such had been our Laws & usages, and such still are; that Religion is considered as the first object of Legislation; and therefore what religious privileges we enjoy (as a minor part of the State) we enjoy as favors granted, and not as inalienable rights: and these favors we receive at the expense of such degrading acknowledgements, as are inconsistent with the rights of freemen. It is not to be wondered at therefore; if those, who seek after power & gain under the pretense of *government & Religion* should reproach their fellow men — should reproach their chief Magistrate, as an enemy of religion Law & good order because he will not, dare not assume the prerogatives of Jehovah and make Laws to govern the Kingdom of Christ.

Sir, we are sensible that the President of the United States, is not the national legislator, and also sensible that the national government cannot destroy the Laws of each State; but our hopes are strong that the sentiments of our beloved President, which have had such genial affect already, like the radiant beams of the Sun, will shine and prevail through all these States and all the world till Hierarchy and Tyranny be destroyed from the Earth. Sir, when we reflect on your past services, and see a glow of philanthropy and good will shining forth in a course of more than thirty years we have reason to believe that America's God has raised you up to fill the chair of State out of that good will which he bears to the Millions which you preside over. May God strengthen you for the arduous task which providence & the voice of the people have cald you to sustain and support you in your Administration against all the predetermined opposition of those who wish to rise to wealth & importance on the poverty and subjection of the people.

And may the Lord preserve you safe from every evil and bring you at last to his Heavenly Kingdom through Jesus Christ our Glorious Mediator. Signed in behalf of the Association.

Nehh Dodge  
Ephram Robbins The Committee  
Stephen S. Nelson

Appendix B

*Thomas Jefferson letter to Danbury Baptist Association, January 1, 1802.*

To messers. Nehemiah Dodge, Ephraim Robbins, & Stephen S. Nelson, a committee of the Danbury Baptist association in the state of Connecticut.

Gentlemen

The affectionate sentiments of esteem and approbation which you are so good as to express towards me, on behalf of the Danbury Baptist association, give me the highest satisfaction. my duties dictate a faithful and zealous pursuit of the interests of my constituents, & in proportion as they are persuaded of my fidelity to those duties, the discharge of them becomes more and more pleasing.

Believing with you that religion is a matter which lies solely between Man & his God, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only, & not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof," thus building a wall of separation between Church & State. Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience, I shall see with sincere satisfaction the progress of those sentiments which tend to restore to man all his natural rights, convinced he has no natural right in opposition to his social duties.

I reciprocate your kind prayers for the protection & blessing of the common father and creator of man, and tender you for yourselves & your religious association, assurances of my high respect & esteem.

Th Jefferson

Jan. 1. 1802.

## Notes

<sup>1</sup> James H. Hutson, *Religion and the Founding of American Republic* (Washington: Library of Congress, 1998), 3.

<sup>2</sup> Ibid, 3.

<sup>3</sup> Ibid, 7.

<sup>4</sup> Ibid, 18.

<sup>5</sup> Ibid, 49.

<sup>6</sup> Ibid, 55.

<sup>7</sup> Ibid, 55.

<sup>8</sup> John F. Wilson and Donald Drakeman, *Church and State in American History: Key Documents, Decisions, and Commentary from the Past Three Centuries* (Colorado, Westview Press, 2003), 73.

<sup>9</sup> David C. Gibbs, *One Nation Under God: Ten Things Every Christian Should Know About the Founding of America* (Florida: Christian Law Association, 2003), 49.

<sup>10</sup> The Rutherford Institute, The Truth About the Wall of Separation, <http://www.christianity.com/churchhistory/11630340/print/> (accessed on Dec 17, 2011).

<sup>11</sup> Journals of the Continental Congress - Articles of War, June 30, 1775, [http://avalon.law.yale.edu/18th\\_century/contcong\\_06-30-75.asp](http://avalon.law.yale.edu/18th_century/contcong_06-30-75.asp), (accessed on Dec 19, 2011).

<sup>12</sup> Military Personnel Subcommittee, *The Religious Climate at the U.S. Air Force Academy*, (Washington, DC: Committee On Armed Services House of Representatives, 2006), 5

<sup>13</sup> Ibid 43.

<sup>14</sup> Ibid 44.

<sup>15</sup> Ibid 44.

<sup>16</sup> Dan Elliott, *The Air Force Academy says Religious Climate is Improving*, Air Force Academy Associated Press, Dec 16, 2009, <http://www.gazette.com/articles/academy-90913-air-force.html>, (Accessed on Dec 19, 2011).

<sup>17</sup> Military Personnel Subcommittee, *The Religious Climate at the U.S. Air Force Academy*, (Washington, DC: Committee On Armed Services House of Representatives, 2006), 4.

<sup>18</sup> *Army Base Cannot Coerce Soldier Trainees to Attend Church Services*, Americans United for Separation of Church and State, Jul 23, 2008, <http://www.commondreams.org/news2008/0723-08.htm> (Accessed on Dec 17, 2011).

<sup>19</sup> *CNN Segment Dramatically Shifts Opinion of MRFF Lawsuit Among both Non-Christians and Christians*, [http://www.huffingtonpost.com/chris-rodde/cnn-segment-dramatically\\_b\\_112682.html](http://www.huffingtonpost.com/chris-rodde/cnn-segment-dramatically_b_112682.html)

<sup>20</sup> Commanding Major General Martin Response to Americans United for Separation of Church and State, dated Jan 21, 2010, <http://www.militaryatheists.org/resources/FLWResponse20100121.pdf>

<sup>21</sup> Commanding Lieutenant General Helmick Response to the Freedom From Religion Foundation, dated Sep 22, 2010, <http://www.militaryatheists.org/resources/BGEARTFBraggCGResponse20100922.pdf>

<sup>22</sup> Ibid.

<sup>23</sup> Luis Martinez, Joseph Rhee, and Mark Schone, "No More Jesus Rifles," ABC News, Jan 21, 2010 <http://abcnews.go.com/Blotter/jesus-rifles/story?id=9618791#.TwIWRNQ7WAg>, (accessed Dec 2, 2011).

<sup>24</sup> Ibid.

<sup>25</sup> Trijicon Value Statement, [http://www.trijicon.com/na\\_en/company/mission.php](http://www.trijicon.com/na_en/company/mission.php)

<sup>26</sup> Luis Martinez, Joseph Rhee, and Mark Schone, "No More Jesus Rifles," ABC News, Jan 21, 2010 <http://abcnews.go.com/Blotter/jesus-rifles/story?id=9618791#.TwIWRNQ7WAg>, (accessed Dec 2, 2011).

<sup>27</sup> Robert W. Tuttle, "Interview with Robert W. Tuttle," by Jesse Merriam, Pew Forum on Religion and Public Life, Pew Research Center Publications, Jul 8, 2008, <http://pewresearch.org/pubs/890/religion-in-the-military>, (accessed Dec 2, 2011).

<sup>28</sup> Jason Torpy, "Interview with Jason Torpy," by National Public Radio, CNS News.com, Dec 5, 2011, <http://cnsnews.com/news/article/atheist-leader-complains-about-us-troops-praying-together-combat-mission> (accessed Dec 27, 2011).

<sup>29</sup> Robert W. Tuttle, "Interview with Robert W. Tuttle," by Jesse Merriam, Pew Forum on Religion and Public Life, Pew Research Center Publications, Jul 8, 2008, <http://pewresearch.org/pubs/890/religion-in-the-military>, (accessed Dec 2, 2011).

<sup>30</sup> Corporal Robert M. Storm, "Mountain Scaled and Fallen Immortalized," Media Bulletin from MCB Pendleton Public Affairs Release, Feb 26, 2004

<sup>31</sup> Mr. Jason Torpy, "Unconstitutional Christian Monuments Mar Veterans Day," Torpy MAAF Blog, Nov 14, 2011

<sup>32</sup> Mr. Jeff Schapiro, "Military Atheist Group Object to the Cross at Camp Pendleton," Christian Post, Nov 17, 2011

<sup>33</sup> Mr. Mark Walker, "Camp Pendleton didn't see the Cross Flap Coming," NC Times, Nov 19, 2011. [http://www.nctimes.com/news/local/military/military-camp-pendleton-didn-t-see-cross-flap-coming/article\\_91a4b507-6de4-51b7-a941-0db5949049cd.html](http://www.nctimes.com/news/local/military/military-camp-pendleton-didn-t-see-cross-flap-coming/article_91a4b507-6de4-51b7-a941-0db5949049cd.html). (Accessed on Dec 19, 2011).

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